

VZCZCXRO2502
PP RUEHROV
DE RUEHNR #2005/01 2661419
ZNY CCCCC ZZH
P 231419Z SEP 09
FM AMEMBASSY NAIROBI
TO RUEHC/SECSTATE WASHDC PRIORITY 1067
INFO RUCNIAD/IGAD COLLECTIVE

C O N F I D E N T I A L SECTION 01 OF 02 NAIROBI 002005

SIPDIS

DEPARTMENT FOR AF/E DRIANO

E.O. 12958: DECL: 09/17/2019
TAGS: [KDEM](#) [PREL](#) [KCOR](#) [PGOV](#) [KE](#)
SUBJECT: PARLIAMENT ON RECESS AFTER CENSURING RINGERA AND
PAYING OFF MAU FOREST LANDLORDS

REF: A. NAIROBI 848
[1](#)B. NAIROBI 1925

Classified By: Ambassador Michael Ranneberger for reasons 1.4 (b) and (d)

[1](#)1. (C) SUMMARY: Following a contentious late night session on September 16, Parliament passed a motion declaring as null and void President's reappointment of Aaron Ringera as the director of the Kenya Anti-Corruption Commission. Parliament also adopted the report of the Mau Forest Task Force, setting in motion the eviction of all farmers and the planting of trees in the Mau Forest water catchment, but not before amending the report to include compensation for all landowners, regardless of whether they acquired the land through legal means. Following these debates, Parliament went into recess and will reconvene on November 10. Parliament did not vote on major pending legislation, such as the anti-money laundering bill and Gitobu Imanyara's constitutional amendment to establish a special tribunal for post-election violence suspects. These bills will pass to the next session for consideration. END SUMMARY.

[1](#)2. (C) On September 16, Parliament concluded a five-month session notable for a number of key precedents. Empowered by new Standing Orders developed with U.S. support and under the leadership of an independent Speaker, Parliament adopted an activist and unprecedented independent voice relative to the President, though Parliament did not pass much substantive legislation.

[1](#)3. (C) Parliament's refusal to follow the lead of the executive branch was signaled early on, when in late April Speaker Kenneth Marende ruled that he would temporarily assume the position of Leader of Government Business as the President and Prime Minister could not agree on a single candidate (Ref A). Although Party for National Unity (PNU - the President's party) Members of Parliament (MPs) discussed the introduction of legislation to give the President sole authority to nominate the Leader of Government Business, the issue was not resolved and Parliament will reopen in November with Marende as temporary leader.

[1](#)4. (C) The most contentious issue addressed by Parliament was the unilateral reappointment of Aaron Ringera as director of the Kenya Anti-Corruption Commission (KACC) by President Kibaki (Ref B). Following the reappointment on the eve of a planned September 3 recess, Parliament extended its session specifically to debate the legality of the President's decision. In the following two weeks, the Speaker rejected a motion by the Minister for Justice to end debate on Ringera because the issue was also before the high court--an important precedent as the government of former President Moi often scuttled Parliamentary debate through the introduction of lawsuits. In the end, Parliament passed a motion declaring that the gazette notice which reappointed Ringera was illegal. Deputy Prime Minister and Minister for Finance Uhuru Kenyatta withdrew the pending appropriations bill,

preventing Parliament from taking the further step of stripping the KACC's funding and deleting Ringera's salary from the budget. It is not clear how the executive will respond to Parliament's action on Ringera. Some advisors have signaled that they will seek a ruling from the Constitutional Court that Parliament has overstepped its constitutional authority by declaring the President's action illegal, but such a move could prompt MPs to oppose all government business, including consideration of the appropriations bill, when they return.

15. (C) On its final day of business Parliament also voted to accept the report of the Mau Task Force. Much debated, and at times opposed by Rift Valley MPs, the report calls for the eviction of all farmers and settlers in the Mau Forest watershed to clear the way for replanting of the Mau Forest, which feeds the crucial Mara river. Farmers originally settled in the Mau Forest on parcels distributed by former Presidents Kenyatta and Moi to relatives and cronies for personal and political gain; many of the recipients subdivided the land and sold it, ending with subsistence farmers, while a number of well connected politicians and businessmen still own large plantations within the forest. Debate has centered on compensation to landholders: the task force recommended that only smallhold farmers with legitimate title deeds (a minority of forest residents) be compensated for their land. However, MPs adopted an amendment to the report which obligates the government to compensate all Mau settlers, to include the owners of large plantations as well as squatters without title. While the adoption of the report paves the way for the restoration of one of Kenya's most important natural water sources, the amendment exponentially

NAIROBI 00002005 002 OF 002

increases the cost of resettlement for the Kenyan taxpayer, and provides a direct payout to the politicians and businessmen responsible for plundering the forest.

16. (C) Finally, just before its recess Parliament adopted legislation which limits Cabinet to 24 members who must be appointed from outside Parliament and must have at least a university degree. Currently, the cabinet is not limited in number, and counts 42 MPs as ministers and another 84 as assistant ministers. If enacted, the ability of the President to influence Parliament by appointing MPs to ministerial positions will be curtailed, and Parliament will have the authority to vet all ministerial appointments. The legislation must be signed by the President and will not go into force until after the 2012 general elections.

17. (C) Parliament failed in this session to pass the Proceeds of Crime and Anti-Money Laundering Bill. The constitutional amendment introduced by MP Gitobu Imanyara to establish a local special tribunal to prosecute suspected perpetrators of post-election violence did not come to the floor for a vote, providing Imanyara with two months to lobby MPs to support the bill as it has so far failed to reach the necessary two-thirds threshold to pass.

18. (C) COMMENT: Empowered by new Standing Orders (developed through the USAID Parliamentary Strengthening Program), Parliament established several important precedents this session and exerted heretofore unprecedented independence from the executive. However, MPs failed to advance any substantive legislative motions or significant reform agenda items, and in the case of the Mau Forest chose to protect Kenya's corrupt political class rather than break with the culture of impunity. When Parliament returns on November 10, we will advocate for the passage of the anti-money laundering bill and the Imanyara amendment on post-election violence. We will also encourage MPs to reach consensus on the draft constitution, which will likely be introduced for Parliament's approval early in the next session before going to a national referendum. END COMMENT.
RANNEBERGER